

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN

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4 UNITED STATES OF AMERICA,)
5) Case No. CR 11-135
6 Plaintiff,) Milwaukee, Wisconsin
7)
8 vs.) August 22, 2012
9) 8:30 a.m.
10 ARVIND AHUJA,)
11)
12 Defendant.) **VOLUME 6**
13) PAGES 1048-1069
14 -----

15 **TRANSCRIPT OF JURY TRIAL**
16 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
17 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

18 APPEARANCES:

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Proceedings recorded by computerized stenography,
transcript produced by computer aided transcription.



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1 P R O C E E D I N G S (8:33 a.m.)

2 THE COURT: Good morning.

3 IN UNISON: Good morning.

4 THE COURT: Be seated, please. Case No. 11-CR-135,
08:34 5 U.S. vs. Arvind Ahuja. You're appearances, please?

6 MR. SULLIVAN: John Sullivan, Melissa Siskind, Tracy
7 Johnson, and Special Agent Geoffrey Cook for the United States.

8 THE COURT: Good morning.

9 MR. WEBB: Your Honor, Dan Webb, Tom Kirsch and
08:34 10 Shannon Allen on behalf of Dr. Ahuja who is present in court.

11 THE COURT: Good morning to all of you as well.

12 IN UNISON: Good morning.

13 THE COURT: Last night the verdict form was reviewed
14 and revised along with the instructions, in light of our
08:34 15 discussion late yesterday. I trust you've received e-mails of
16 these documents and invite your comments.

17 MS. SISKIND: I don't believe we received any e-mails.

18 MR. KIRSCH: I got one with the jury instructions last
19 night. I didn't get the verdict form but I've reviewed the jury
08:35 20 instructions and they seem to be fine, consistent with what the
21 Court read in court yesterday.

22 THE COURT: I believe the e-mail should have been sent
23 to you, Ms. Siskind, and to Ms. Johnson as well.

24 MS. SISKIND: We did not receive it, Your Honor.

08:35 25 THE COURT: Well, I will give you copies of the

1 instructions which have been reordered a bit in light of what
2 occurred yesterday, and modifications were made where
3 typographical changes were necessary. I'll give you a few
4 minutes to look the documents over.

08:35 5 MS. SISKIND: Your Honor, the first thing I noticed is
6 the case number is wrong, it's 11-CR-135, not 35.

7 THE COURT: 135. All right. That can be modified
8 easily. Is there anything else?

9 (No response.)

08:36 10 THE COURT: I'll return in a couple moments so you can
11 have more time to look over the documents.

12 Has the defense looked them over?

13 MR. KIRSCH: Yes, Your Honor. I just looked at the
14 e-mail, it looks like it was sent to Melissa dot instead of
08:36 15 Melissa underscore Siskind.

16 THE COURT: Dots and underscores make a difference in
17 our dot-com society.

18 THE BAILIFF: All rise.

19 (Recess taken at 8:36 a.m., until 8:59 a.m.)

08:59 20 THE COURT: Be seated, please.

21 Have the parties had a chance to review the revised
22 documents?

23 MS. SISKIND: Yes, Your Honor.

24 THE COURT: Are they satisfactory to the government?

09:00 25 MS. SISKIND: Yes, Your Honor.

1 THE COURT: Are they satisfactory to the defense?

2 MR. WEBB: Yes, Your Honor.

3 THE COURT: What we'll do is we'll bring the jury in
4 and we'll have the bailiff sworn and I will ask that the
09:00 5 documents be taken to the jury room for the jury's use, and
6 deliberations will then commence.

7 THE BAILIFF: All rise.

8 (Jury in at 9:01 a.m.)

9 (Bailiff sworn.)

09:01 10 THE COURT: Members of the jury, the exhibits that you
11 may review are being brought to the jury room. You will each
12 have copies of the instructions as well as a copy of the
13 verdict. I do ask that you commence your deliberations at this
14 time, and that you, again, take note of the requirement that you
09:02 15 not do any type of research, that you not look at any materials
16 or consider any matters that were not presented during the
17 course of this trial.

18 Thank you very much. Please rise.

19 (Jury out for deliberations at 9:02 a.m.)

09:02 20 THE COURT: Be seated.

21 I would certainly suggest to the parties that you
22 remain available for at least the first 30 minutes following the
23 commencement of instructions, inasmuch as early on in
24 deliberations there are questions. After that if you will be
09:03 25 available for jury questions or any other matters I'd say within

1 30 minutes. All right? Is there anything else?

2 MS. JOHNSON: Not from the government

3 THE COURT: Very well. We are in recess.

4 (Trial adjourned for continued jury deliberations at
03:40 5 9:03 a.m., until 3:40 p.m.)

6 THE COURT: Be seated, please.

7 The Court has received a note from the jury. It came
8 at approximately 2:55 p.m. this afternoon, and copies have been
9 provided to you.

03:41 10 For the record it states:

11 "What is the procedure for receiving testimony to
12 review?"

13 "2. Can we review Mr. Miller's testimony regarding
14 Dr. Ahuja's response that, quote, 'he would get back to him,'
03:41 15 unquote, regarding foreign bank accounts?"

16 It's signed by the foreperson. The government may
17 respond.

18 MR. SULLIVAN: Your Honor, I think these two questions
19 are really the same question. They're asking for a portion of
03:41 20 the testimony. We would ask that the Court respond to the
21 question that the jurors should use their collective
22 recollection of the testimony because they're not entitled to
23 just one small part of a transcript.

24 THE COURT: The defense.

03:42 25 MR. WEBB: We have a similar suggestion. We agree

1 essentially that -- I think the response, though -- if my
2 understanding from my recollection of the case law is correct,
3 my suggestion is the response should be -- and I wrote it down
4 here, but that -- "We will not be able to provide you with
03:42 5 witness testimony. You must rely on your individual
6 recollections regarding witness testimony."

7 I think the case law talks about their individual
8 recollections, and because there's really no such thing as a
9 collective recollection. I mean, they reach are to rely upon
03:42 10 their individual recollections. I think that's what the case
11 law says, based on what I recall from the case law. So that's
12 my suggested response.

13 THE COURT: Well, the Court is certainly in agreement
14 with the bottom-line response to the jury's request, that is,
03:43 15 the testimony of Mr. Miller should not be read to the jury.

16 The Court will craft a response and you will get a
17 chance to look at it before it goes in and I will write it out
18 now.

19 This is what I propose: "Mr. Miller's testimony will
03:45 20 not be made available to you; therefore, you must rely upon your
21 recollection of his testimony."

22 Do you wish to be heard?

23 MR. WEBB: Your Honor, the first question which was is
24 there a procedure for viewing testimony, is there a procedure
03:45 25 for reviewing testimony to review --

1 THE COURT: I don't think it's necessary to break the
2 response down because it's apparent that together the questions
3 are asking that Mr. Miller's testimony be read or otherwise made
4 available to the jury. That's why I responded in that way. But
03:46 5 it is clear that there are two questions written out, but the
6 two questions really require only one response: "No."

7 MR. WEBB: I'm not trying to be disagreeable. I only
8 would suggest -- I thought they might be looking for a procedure
9 to review more testimony than Mr. Miller's, and I thought we
03:46 10 should be more assertive to make sure they know they're not
11 going to get any witness testimony. But if you prefer not to
12 I'm not objecting -- I'm not objecting to what you are going
13 to -- I was trying to make it more comprehensive to avoid
14 further questions.

03:46 15 THE COURT: I appreciate that view because I hadn't
16 thought of the request as one that might be broader than a
17 request that Mr. Miller's testimony be made available.

18 Does the government have any further comment? Because
19 in light of what Mr. Webb has said it is perhaps prudent to make
03:47 20 clear to the jury that transcripts will not be available to the
21 jury.

22 MR. SULLIVAN: We agree with that. That probably
23 makes sense.

24 THE COURT: All right. "Testimony will not be made
03:50 25 available to you. Therefore, Mr. Miller's testimony cannot be

1 reviewed and you must rely upon your recollection of all witness
2 testimony."

3 MR. SULLIVAN: No objection from the government.

4 MR. WEBB: No objection, Your Honor.

03:50 5 THE COURT: All right. That will be typed up and
6 submitted to the jury. We will provide you with a copy of what
7 is given to the jury for your files.

8 All right?

9 MR. WEBB: Yes, sir. Can I raise one other quickie
03:50 10 while you're here, Your Honor?

11 THE COURT: Certainly.

12 MR. WEBB: My experience over the years is that -- I'm
13 always concerned that -- having jurors feel any pressure as they
14 deliberate reaching a verdict. They started at around 9:00
03:51 15 o'clock this morning. I would respectfully ask the court if at
16 5:00 p.m. you would simply send in a note that says "Would you
17 prefer to continue deliberating or would you rather come back
18 and resume the deliberations tomorrow morning at 8:30?" That
19 way they don't feel pressured. And 9:30 to 5:00 is a long day
03:51 20 of jurors talking to each other, and I would like to give them
21 that option so that they don't feel pressured.

22 THE COURT: Well, I certainly appreciate what you have
23 to say, but we will go until at least 6 :00.

24 MR. WEBB: Yes, Your Honor.

03:51 25 THE COURT: Is there anything else?

1 MR. WEBB: No, Your Honor.

2 THE COURT: We will not -- I will not have them
3 deliberate after 6:00, in part because they will be doing
4 fire-alarm testing. Tomorrow morning we have naturalization
03:51 5 ceremonies that will be taking place in the morning. Hence, if
6 it is necessary for you to enter the building at some point
7 during the day and there is a long line, simply go to the CSOs
8 and let them know you're coming to this courtroom and we'll make
9 arrangements for you to bypass the line. Okay?

03:52 10 MR. WEBB: Thank you, Your Honor.

11 THE COURT: All right. All right, we'll get the note
12 to the jury and copies will be provided.

13 THE BAILIFF: All rise.

14 (Trial adjourned for continued jury deliberations at
05:13 15 3:52 p.m., until 5:13 p.m.)

16 THE BAILIFF: All rise.

17 (Jury in at 5:14 p.m.)

18 THE BAILIFF: Please be seated

19 THE COURT: Has the jury arrived at a verdict?

05:14 20 THE FOREPERSON: We have, Your Honor.

21 THE COURT: Would you please hand it to the bailiff.

22 (Verdict tendered to the court.)

23 THE COURT: Would the clerk please read the verdict,
24 and would the defendant please stand.

05:15 25 **VERDICT**

1 THE CLERK: Verdict in United States District Court,
2 Eastern District of Wisconsin, Case No. 11-CR-135, United States
3 of America vs. Arvind Ahuja.

4 We, the jury, having been duly empaneled and sworn,
05:15 5 return the following verdicts:

6 Count 1. Willfully making and subscribing a false tax
7 return for calendar year 2006.

8 Not guilty.

9 Count 2. Willfully making and subscribing a false tax
05:15 10 return for calendar year 2007.

11 Not guilty.

12 Count 3. Willfully making and subscribing a false tax
13 return for calendar year 2008.

14 Not guilty.

05:15 15 Count 4. Willfully making and subscribing a false tax
16 return for calendar year 2009.

17 Guilty.

18 Count 5. Willful failure to file an FBAR for calendar
19 year 2007.

05:16 20 Not guilty.

21 Count 6. Willful failure to file an FBAR for calendar
22 year 2008.

23 Not guilty.

24 Count 7. Willful failure to file an FBAR for calendar
05:16 25 year 2009.

1 Guilty.

2 Signed by the foreperson, dated August 22nd, 2012.

3 THE COURT: Starting with the foreperson and moving to
4 the left and then across the jury box moving to the right, was
05:16 5 this and is this now your verdict?

6 A JUROR: Yes, Your Honor.

7 A JUROR: Yes, Your Honor.

8 A JUROR: Yes.

9 A JUROR: Yes, Your Honor.

05:16 10 A JUROR: Yes, sir.

11 A JUROR: Yes, Your Honor.

12 A JUROR: Yes, Your Honor.

13 A JUROR: Yes, Your Honor.

14 A JUROR: Yes, Your Honor.

05:17 15 A JUROR: Yes, Your Honor.

16 A JUROR: Yes, Your Honor.

17 A JUROR: Yes, Your Honor.

18 THE COURT: Members of the jury, I discharge you at
19 this time with the thanks of the parties. Our system works
05:17 20 because of you. Each person charged with a crime is entitled to
21 a jury of his or her peers, a jury which has considered and
22 deliberated on the evidence and has applied the law as
23 instructed by the court. You've shown patience, you've devoted
24 your time, and you've certainly paid attention to the evidence
05:17 25 in the case, and on behalf of the parties I thank you and I ask

1 that you return to the jury room at this time.

2 THE BAILIFF: All rise.

3 (Jury out at 5:17 p.m.)

4 THE COURT: Please be seated. At the outset, on the
05:18 5 basis of the verdict which was just returned by the jury, the
6 Court does find that the defendant's motion for a judgment of
7 acquittal which was previously filed and under consideration by
8 the Court is deemed moot.

9 With that, I invite any comments that the parties wish
05:18 10 to make. First of all, does the government wish to be heard?

11 MS. SISKIND: Yes, Your Honor. On the subject of
12 bond, Your Honor, we do not oppose that the defendant be
13 released on bond; however, we would ask a substantial increase
14 in the amount of the cash bond from what it's previously set at.
05:19 15 I believe it's currently set at \$5,000.

16 In light of the picture Your Honor heard about the
17 defendant's finances in this case, the substantial tax loss
18 related to these charges and the fact that the presumption of
19 innocence has now been removed by the jury's verdict, the
05:19 20 government would respectfully request a bond to be set at a
21 higher amount. The government would recommend that the
22 defendant be required to post both of his homes as collateral
23 for his bond.

24 THE COURT: I turn to the defense.

05:19 25 MR. WEBB: Your Honor, we strenuously object to that.

1 There's no chance this defendant will not be here at any time
2 this court orders him to be here. There's just no question.
3 Trying to make him post his homes at this point in time, there's
4 just no factual basis to request that. And he's always been
05:19 5 here, he'll always be here. There's no possibility he will not
6 be here with all the ties he has to this community, and there's
7 just no basis to make him post his homes.

8 THE COURT: Well, I do believe that there certainly is
9 a basis for concern on the part of the government as to whether
05:20 10 or not this defendant will remain in the community. On the
11 other hand, I have not seen anything during the course of this
12 case to suggest that the defendant will not appear for further
13 proceedings, or otherwise cooperate in the preparation of a
14 presentence report.

05:20 15 Let me look at something else, however.

16 (Brief pause.)

17 THE COURT: It would appear to the Court that the
18 defendant should be required, at the very least, to be barred
19 from encumbering or otherwise transferring any assets except in
05:24 20 the ordinary course of his employment. I don't believe that any
21 additional security would therefore be necessary.

22 Do the parties wish to be heard with respect to the
23 same?

24 MS. SISKIND: Your Honor, we just raise one additional
05:24 25 issue. Your Honor can see from a review of the docket the sheer

1 number of times the defendant has been permitted to travel
2 outside --

3 THE COURT: I note that he was permitted to travel to
4 Phoenix and --

05:25 5 MS. SISKIND: I think there was at least a dozen --

6 THE COURT: I know at least three that I just looked
7 at.

8 MS. SISKIND: And he was also allowed to travel at one
9 point outside of the United States.

05:25 10 THE COURT: I will not allow any travel outside the
11 United States. So the defendant's passport is to be retrieved.

12 MS. SISKIND: I believe the clerk's office has had it
13 since the beginning of this case. We would ask that travel be
14 restricted to this district.

05:25 15 THE COURT: Yes.

16 MR. WEBB: Your Honor, he has traveled in the
17 Continental United States because of his children who are in
18 school in other parts of the country. And he's supposed to
19 travel next week, for example, to get his youngest daughter
05:25 20 situated in school. That would be an enormous hardship --

21 THE COURT: I'm not going to restrict his travel any
22 more than it was otherwise restricted, except he may not travel
23 outside the Continental United States. His passport is to be
24 retained in that regard.

05:26 25 The defendant is, however, barred from, as I said,

1 transferring any assets except in the ordinary course of
2 business. And if there is to be any -- and he may not obviously
3 encumber any assets that he has. To the extent that there are
4 transfers, minimal transfers of \$500 or less would not be
05:26 5 included in this. All right?

6 Is there any question respecting these limitations?

7 MR. WEBB: No, Your Honor. I had one other issue,
8 though, very quickly. On the statement by the Court that our
9 post-trial motion is moot, we did have -- he was convicted now
05:27 10 of 2009, and we did have -- our post-trial motion was directed
11 at 2009.

12 THE COURT: All right. I was thinking it was only to
13 2007 and 2008 -- 2006, 2007 and 2008. Let me look at it again.
14 But to the extent that 2009 is included then it would not be
05:27 15 moot.

16 MR. WEBB: We filed a supplemental brief on 2009,
17 Your Honor. 2007 to 2008. The motion went to 2009.

18 THE COURT: Let me look at the last one. The 152.
19 Counts 7 and 8.

05:29 20 (Brief pause.)

21 THE COURT: 2009 would be Count 9. I do not see --

22 MR. KIRSCH: Your Honor?

23 THE COURT: Yes.

24 MR. KIRSCH: You may be looking at our supplemental
05:29 25 brief with supplemental authorities, but we moved for a directed

1 verdict on all the counts in the Rule 29 motion that was filed.
2 And then after the Court had some questions we filed that
3 supplemental authority where we focused on 2007 and 2008. But
4 our Rule 29 motion was for all years and all counts.

05:30 5 THE COURT: All right. I was just looking at 152
6 which was the supplemental brief that you filed on the 21st.
7 I'll go back to look at the initial motion. Paragraph 5 does
8 say all counts, so it is not moot except as to the counts as to
9 which there were verdicts of not guilty.

05:30 10 All right. Now, in connection with the motion for
11 judgment of acquittal, I assume you are reiterating your request
12 for a judgment of acquittal?

13 MR. KIRSCH: Yes, Your Honor.

14 THE COURT: Do you wish to have time to supplement
05:31 15 what was previously submitted?

16 MR. KIRSCH: Yes.

17 THE COURT: That way would be most helpful because
18 then you can focus on which counts there were verdicts of
19 guilty. How much time do you need?

05:31 20 MR. KIRSCH: 14 days. Whatever the Court is inclined
21 to give.

22 THE COURT: I will give you whatever time you need.

23 MR. KIRSCH: 14 days then, Your Honor.

24 THE COURT: I would assume the government would like
05:31 25 to respond in writing?

1 MS. SISKIND: Yes, Your Honor.

2 THE COURT: How much time do you think you'd need?

3 MS. SISKIND: 14 days as well, Your Honor.

4 THE COURT: All right. Can the clerk give us a

05:31 5 schedule for sentencing in this matter subsequent to submission
6 of the briefs.

7 (Clerk and Court confer.)

8 THE CLERK: Okay. The presentence report would be due
9 December 12th.

05:34 10 Any objections to the presentence report are due
11 January 3rd.

12 Any motions and sentencing memoranda are due January
13 10th.

14 And a sentencing date of January 18th at 9:30.

05:35 15 Actually, Counsel, I'm sorry, we're going to have to
16 change that time to 10:00 o'clock.

17 THE COURT: Is that satisfactory to both parties?

18 MS. SISKIND: Yes, Your Honor.

19 MR. WEBB: Yes, Your Honor.

05:35 20 THE COURT: Is there anything else at this time?

21 MS. SISKIND: Not from the government, Your Honor.

22 MR. KIRSCH: There is, Your Honor. Exhibits. Is it
23 the Court's practice to give the exhibits back to the parties?

24 THE COURT: No.

05:35 25 MR. KIRSCH: Okay. Your Honor, we ask -- we are going

1 to file -- hopefully it's going to be an agreed motion, but
2 we're going to file a motion to seal some of the exhibits in the
3 case. We ask that the Court at least temporarily hold those
4 exhibits under seal so we can file something, say seven days.
05:35 5 But I want to give the government a chance to look at it before.

6 THE COURT: The exhibits will be retained in chambers
7 and not forwarded to the clerk's office until the parties have
8 had a chance to consider how they should be handled.

9 The Court notes that there are tax returns and other
05:36 10 personal information in the exhibits which ordinarily should not
11 be open to public scrutiny except under exceptional
12 circumstances and, therefore, these materials will be held
13 pending the receipt of a formal motion and/or stipulation by the
14 parties.

05:36 15 MS. SISKIND: Your Honor, on a related issue
16 Mr. Kirsch's comment reminded me, three of the tax returns that
17 are in evidence are original returns that the IRS needs back.
18 So somebody will be giving your chambers copies of returns to
19 substitute -- certified copies to substitute for the originals.

05:37 20 THE COURT: Again, I urge the parties to work jointly
21 in submitting requests and/or motions to the Court. All right?

22 Let me note, I did see something in the transcript
23 that was not clearly ruled upon, and that was a motion for
24 mistrial that the defendant made in the early portion of the
05:37 25 case. I don't recall exactly the time. But by virtue of the

1 Court's ruling which followed that side-bar motion, the Court
2 was denying the motion for mistrial. Just so that the record is
3 complete and all of the pending motions are addressed in one
4 fashion or another.

05:37

5 Is there anything else?

6 MS. SISKIND: No, Your Honor.

7 MR. WEBB: No, Your Honor.

8 THE COURT: Very well. We stand in recess.

9 THE BAILIFF: All rise.

05:38

10 (Trial concluded at 5:38 p.m.)

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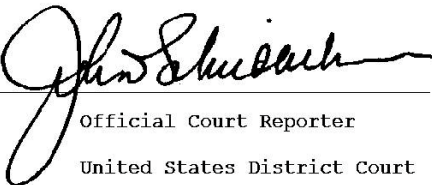
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
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4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 22nd day of August, 2012
11 Milwaukee, Wisconsin.

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13 _____
14 Official Court Reporter
United States District Court

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VERDICT

PUBLISHED BY THE CLERK..... 1057

WITNESS

EXAMINATION

PAGE

NO WITNESS TESTIMONY

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E X H I B I T S

NUMBER

DESCRIPTION

OFFERED ADMITTED

NO EXHIBITS